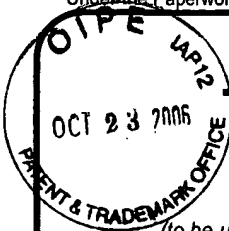


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# TRANSMITTAL FORM

(to be used for all correspondence after initial filing)

Application Number Filing Date First Named Inventor Group Art Unit Examiner Name Attorney Docket Number	10/621,423
	08/18/2003
	Miller
	3643
	A. W. Valenti
Total Number of Pages in This Submission	Miller-T-1

## ENCLOSURES (check all that apply)

<input checked="" type="checkbox"/> Fee Transmittal Form <input checked="" type="checkbox"/> Fee Attached <input type="checkbox"/> Amendment / Reply <input type="checkbox"/> After Final <input type="checkbox"/> Affidavits/declaration(s) <input type="checkbox"/> Extension of Time Request <input type="checkbox"/> Express Abandonment Request <input type="checkbox"/> Information Disclosure Statement <input type="checkbox"/> Certified Copy of Priority Document(s) <input type="checkbox"/> Response to Missing Parts/Incomplete Application <input type="checkbox"/> Response to Missing Parts under 37 CFR 1.52 or 1.53	<input type="checkbox"/> Assignment Papers (for an Application) <input type="checkbox"/> Drawing(s) <input type="checkbox"/> Licensing-related Papers <input type="checkbox"/> Petition <input type="checkbox"/> Petition to Convert to a Provisional Application <input type="checkbox"/> Power of Attorney, Revocation <input type="checkbox"/> Change of Correspondence Address <input type="checkbox"/> Terminal Disclaimer <input type="checkbox"/> Request for Refund <input type="checkbox"/> CD, Number of CD(s) _____	<input type="checkbox"/> After Allowance Communication to Group <input type="checkbox"/> Appeal Communication to Board of Appeals and Interferences <input checked="" type="checkbox"/> Appeal Communication to Group (Appeal Notice, Brief, Reply Brief) <input type="checkbox"/> Proprietary Information <input type="checkbox"/> Status Letter <input type="checkbox"/> Other Enclosure(s) (please identify below):
Remarks		

## SIGNATURE OF APPLICANT, ATTORNEY, OR AGENT

Firm or Individual name	LaMorte & Associates
Signature	
Date	10/08/2006

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# FEE TRANSMITTAL

## for FY 2006

Effective 10/1/2004. Patent fees are subject to annual revision.

☒ Applicant claims small entity status. See 37 CFR 1.27

TOTAL AMOUNT OF PAYMENT (\$ ) 250

### Complete if Known

Application Number 10/621,423

Filing Date 08/18/2003

First Named Inventor Miller

Examiner Name A. W. Valenti

Art Unit 3643

Attorney Docket No. Miller-T-1

### METHOD OF PAYMENT (check all that apply)

☐ Check ☐ Credit card ☐ Money Order ☐ Other ☐ None

☒ Deposit Account:

Deposit  
Account  
Number  
Deposit  
Account  
Name

50-1954

Lamorte & Associates

The Director is authorized to: (check all that apply)

☒ Charge fee(s) indicated below ☒ Credit any overpayments

☒ Charge any additional fee(s) or any underpayment of fee(s)

☐ Charge fee(s) indicated below, except for the filing fee to the above-identified deposit account.

### FEE CALCULATION

#### 1. BASIC FILING FEE

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1001	790	2001	395	Utility filing fee	
1002	350	2002	175	Design filing fee	
1003	550	2003	275	Plant filing fee	
1004	790	2004	395	Reissue filing fee	
1005	160	2005	80	Provisional filing fee	

SUBTOTAL (1) (\$ )

#### 2. EXTRA CLAIM FEES FOR UTILITY AND REISSUE

	Extra Claims	Fee from below	Fee Paid
Total Claims	-20** =	X	
Independent Claims	-3** =	X	
Multiple Dependent			

Large Entity Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description
1202	18	2202	9	Claims in excess of 20
1201	88	2201	44	Independent claims in excess of 3
1203	300	2203	150	Multiple dependent claim, if not paid
1204	88	2204	44	** Reissue independent claims over original patent
1205	18	2205	9	** Reissue claims in excess of 20 and over original patent

SUBTOTAL (2) (\$ )

\*\*or number previously paid, if greater; For Reissues, see above

### FEE CALCULATION (continued)

#### 3. ADDITIONAL FEES

Large Entity

Small Entity

Fee Code	Fee (\$)	Fee Code	Fee (\$)	Fee Description	Fee Paid
1051	130	2051	65	Surcharge - late filing fee or oath	
1052	50	2052	25	Surcharge - late provisional filing fee or cover sheet	
1053	130	1053	130	Non-English specification	
1812	2,520	1812	2,520	For filing a request for <i>ex parte</i> reexamination	
1804	920*	1804	920*	Requesting publication of SIR prior to Examiner action	
1805	1,840*	1805	1,840*	Requesting publication of SIR after Examiner action	
1251	110	2251	55	Extension for reply within first month	
1252	430	2252	215	Extension for reply within second month	
1253	980	2253	490	Extension for reply within third month	
1254	1,530	2254	765	Extension for reply within fourth month	
1255	2,080	2255	1,040	Extension for reply within fifth month	
1401	340	2401	170	Notice of Appeal	
1402	340	2402	170	Filing a brief in support of an appeal	250
1403	300	2403	150	Request for oral hearing	
1451	1,510	1451	1,510	Petition to institute a public use proceeding	
1452	110	2452	55	Petition to revive - unavoidable	
1453	1,370	2453	685	Petition to revive - unintentional	
1501	1,370	2501	685	Utility issue fee (or reissue)	
1502	490	2502	245	Design issue fee	
1503	660	2503	330	Plant issue fee	
1460	130	1460	130	Petitions to the Commissioner	
1807	50	1807	50	Processing fee under 37 CFR 1.17(q)	
1806	180	1806	180	Submission of Information Disclosure Stmt	
8021	40	8021	40	Recording each patent assignment per property (times number of properties)	
1809	790	2809	395	Filing a submission after final rejection (37 CFR 1.129(a))	
1810	790	2810	395	For each additional invention to be examined (37 CFR 1.129(b))	
1801	790	2801	395	Request for Continued Examination (RCE)	
1802	900	1802	900	Request for expedited examination of a design application	

Other fee (specify) pub fee +10 copies

\*Reduced by Basic Filing Fee Paid

SUBTOTAL (3) (\$ ) 250

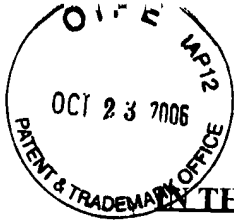
### SUBMITTED BY

Name (Print/Type)	Eric LaMorte	Registration No. (Attorney/Agent)	34653	Telephone	215 321-6772
Signature		Date	10/08/2006		

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AF  
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**THE UNITED STATES PATENT AND TRADEMARK OFFICE**

In re Patent Application of:  
**Miller**

Examiner: A. W. Valenti

Serial No.: **10/621,423**

Group Art Unit: **3643**

Filed: **August 18, 2003**

Date: **October 08, 2006**

**For: Floral Arrangement Holding Assembly And Method**

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(Date of Deposit) **Oct 8 2006**

(Signature and Date) **[Signature] 10-8-06**

**APPEAL BRIEF OF APPELLANT**

Sir:

Having filed a Notice Of Appeal, the Applicant herein files a Brief in accordance with 37 C.F.R. 41 et seq.

**I. REAL PARTY IN INTEREST [37 CFR §41.37(c)(1)]**

The subject application is not assigned. As such, the Real Party in Interest is the Applicant.

**II. RELATED APPEALS AND INTERFERENCES [37 CFR §41.37(c)(2)]**

No other related application is currently subject to an Appeal or Interference.

**III. STATUS OF CLAIMS [37 CFR §41.37(c)(3)]**

Claims 1, 3 and 7 - 12 are pending in this application.

Claims 1, 3 and 7 - 12 stand as finally rejected by the Examiner.

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01 FC:2402 250.00 DA

#### **IV. STATUS OF THE AMENDMENTS [37 CFR §41.37(c)(4)]**

The amendment filed by the Applicant on March 06, 2006 was entered by the Examiner. No other amendments were filed.

#### **V. SUMMARY OF THE CLAIMED SUBJECT MATTER [37 CFR §41.37(c)(5)]**

The subject application has two pending independent claim, which are Claim 1 and Claim 8. All other claims depend from these three dependent claims.

**Claim 1** sets forth a reusable floral arrangement assembly *(10, Fig. 1)*. *(See preamble of Claim 1)* The assembly includes a tray *(26 Fig. 2)*. A connector *(30 Fig. 2)* is disposed on the bottom of the tray. *(See Specification, page 8, lines 1-2)*. The floral arrangement assembly *(10)* also includes a plurality of disposable foam elements *(16)* that are circular in shape. *(See Specification, page 6, lines 17-21)* This plurality of circular elements includes a base level circular element and at least one subsequent level circular element. *(See Fig. 2 and Specification, page 9, lines 7- 11)* The base level circular element rests upon the top surface of the tray. *(See Fig. 2)* The base level circular element and each subsequent level circular element differ in diameter and are stacked atop each other forming a foam structure having tiered configuration. *(See Specification, page 6, lines 17-21)* The tiered configuration has exposed vertical surfaces and horizontal surfaces on each of the levels. *(See Specification, page 7, lines 3-8)*

A grid work *(20, Fig. 2)* extends over the foam structure *(16)*. One each level, the grid work *(20)* demarcates both the vertical surfaces and the horizontal surfaces that lay exposed on the foam structure into a plurality of equally sized areas *(24)*. *(See Specification, page 9, lines 18 – 23.)*

**Claim 8** also sets forth a floral arrangement assembly. *(See preamble of Claim 8)* The floral arrangement assembly includes a plurality of foam elements *(51, Fig. 4)* that include a base level element and at least one subsequent level element *(See Fig. 4)*. Each of the foam elements is cog-shaped having square protrusions *(52, Fig. 4)* that are arranged in a radial

pattern. (*See Specification, page 12, lines 9-20*). The base level element and each subsequent level element differ in size and are stacked atop each other forming a foam structure (*50, Fig. 4*) having tiered configuration with exposed vertical surfaces and horizontal surfaces (*See Specification, page 12, lines 15-19*).

**VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL [37 CFR §41.37(c)(6)]**

The grounds of rejection to be reviewed on appeal are as follows:

- 1. - Claims 1, 7, 8, 10-12 stand rejected under 35 USC 103(a) as being unpatentable in view of U.S. Patent No. 3,651,601 to La Montagne in further view of view of GB 1544630 to James; U.S. Patent No. 3,962,825 to O'Connell; and U.S. Patent No. 4,887,385 to James.**
- 2.- Claims 3 and 9 stand rejected under 35 USC 103(a) as being unpatentable in view of U.S. Patent No. 3,651,601 to La Montagne in further view of view of GB 1544630 to James; U.S. Patent No. 3,962,825 to O'Connell; U.S. Patent No. 4,887,385 to James and in further view of French reference FR 2620591 to Roder.**

**VII. ARGUMENTS. [37 CFR §41.37(c)(7)]**

**GROUND 1 - Whether the Examiner erred in finally rejecting Claims 1, 7, 8, 10-12 under 35 USC 103(a) as being unpatentable in view of U.S. Patent No. 3,651,601 to La Montagne in further view of view of GB 1544630 to James; U.S. Patent No. 3,962,825 to O'Connell; and U.S. Patent No. 4,887,385 to James.**

The rejected claims contain two independent claims, which are Claim 1 and Claim 8. Both claims are believed to be distinguishable over the cited art as explained below.

### **Claim 1**

Claim 1 sets forth a reusable floral arrangement assembly. The assembly includes a tray. A connector is disposed on the bottom of the tray. The floral arrangement assembly also includes a plurality of disposable foam elements that are circular in shape. This plurality of circular elements includes a base level circular element and at least one subsequent level circular element. The base level circular element rests upon the top surface of the tray. The base level circular element and each subsequent level circular element differ in diameter and are stacked atop each other forming a foam structure having tiered configuration. The tiered configuration has exposed vertical surfaces and horizontal surfaces on each of the levels.

A grid work extends over the foam structure. On each level, the grid work demarcates both the vertical surfaces and the horizontal surfaces that lay exposed on the foam structure into a plurality of equally sized areas.

**The LaMontagne patent** discloses a flower holder. However the flower hold makes no disclosure concerning a tired configuration. In fact, the Examiner has stated:

*“LaMontagne is silent on a plurality of foam elements wherein the base level element and at least one subsequent level differs in size and are stacked atop each other forming a foam structure having a tiered configuration with exposed vertical surfaces and horizontal surfaces.”*

To address the deficiencies of the LaMontagne patent, the Examiner cites the British James reference, the ‘825 O’Connell patent and the ‘385 James Patent.

The cited **British James reference** does not show or suggest multiple circular layers of foam arranged in a tiered configuration. It is very clear from the drawings of the British James reference that the foam has only one diameter from its top to its bottom.

The **‘825 O’Connell patent** shows a square block used to make a centerpiece bouquet.

Again, the O'Connell patent does not disclose circular stacked disks.

The '**385 James patent** connectors for interconnecting segments of floral foam. The floral foam arrangements disclosed in the patent are semi-elliptical in shape. The '385 patent makes no disclosure of stacked circular disks.

As applied to the specific wording of Claim 1, it is clear that the combined cited prior art does not disclose a floral arrangement system having circular layers of different diameters that are stacked atop each other to form a tiered configuration. The prior art also fails to show any sort of grid that would lay over such a tiered structure and divide the various horizontal and vertical surfaces of each layer into equally sized areas.

Since all of these elements are claimed in the wording of Claim 1 but are not found or suggested in the cited references, it is clear that the combined prior art references not disclose the matter of Claim 1 or its dependent claims.

It is therefore respectfully requested that the 35 USC 103 rejections be withdrawn from Claim 1 and its dependent claims.

### **Claim 8**

Claim 8 also sets forth a floral arrangement assembly. The floral arrangement assembly includes a plurality of foam elements that include a base level element and at least one subsequent level element. Each of the foam elements is cog-shaped having square protrusions that are arranged in a radial pattern. The base level element and each subsequent level element differ in size and are stacked atop each other forming a foam structure having tiered configuration with exposed vertical surfaces and horizontal surfaces.

On page 12 of the original specification, the Applicant clearly states the benefits of having layers made with cog-shapes. As is stated on page 12:

*"More complex floral arrangements can be made using more complex three-dimensional foam structures. Referring to Fig. 4, one such complex embodiment is shown. In the embodiment of Fig. 4, a three-dimensional foam structure 50 is shown,*

*wherein each layer 51 is configured like a cog. As such, each layer 51 in the three-dimensional foam structure 50 has a plurality of square cog teeth protrusions 52 that symmetrically protrude from a central hub. As such, flat surfaces are exposed at the top and sides of each of the cog teeth protrusions 52, wherein each of these exposed surfaces lay in a different plane. The various cog teeth protrusions 52 on each level of the three-dimensional foam structure 50 are staggered. As such, the cog teeth protrusions 52 on adjoining layers of the three-dimensional foam structure do not align in common planes. Accordingly, differently oriented planes are present on each level of the three-dimensional foam structure 50. This enables a floral designer to place flowers and greens at a variety of different angles on each level 51 of the three-dimensional foam structure 50.” “*

The LaMontagne patent, British James reference, O’Connell patent and ‘385 James patent all fail to disclose any floral arrangement system that uses cog-shaped layer. The combined reference therefore clearly fails to disclose or suggest the matter set forth in Claim 8 and its dependent claims.

The structure claimed by the applicant has benefits that are expressed in the patent application. The cited prior art clearly does not teach or suggest the claimed structure. It is therefore respectfully requested that the 35 USC 103 rejections be withdrawn from Claim 8 and its dependent claims.

**GROUND 2 - Whether the Examiner erred in finally rejecting Claims 3 and 9 under 35 USC 103(a) as being unpatentable in view of U.S. Patent No. 3,651,601 to La Montagne in further view of view of GB 1544630 to James; U.S. Patent No. 3,962,825 to O’Connell; U.S. Patent No. 4,887,385 to James and in further view of French reference FR 2620591 to Roder**

#### Claim 3

Claim 3 depends from Claim 1. Claims 1 is believed to be distinguishable over the combined LaMontagne patent, British James reference, O’Donnell patent and ‘385 patent for the reasons previously presented.

The additionally cited Roder reference is cited to show prongs that extend up from a tray. The Roder reference makes no disclosure of stacked circular foam elements that are covered with



a grid. Accordingly, the Roder patent does not address the deficiencies of the combined LaMontagne patent, British James reference, O'Donnell patent and '385 James patent as applied to Claim 1.

Claim 3 is therefore believed to be allowable since it depends from, and further defines, an allowable base claim.

#### Claim 9

Claim 9 In regard to Claim 9, Claim 9 depends from Claim 8. Claims 9 is therefore believed to be distinguishable over the combined LaMontagne patent, British James reference, O'Donnell patent and '385 patent for the reasons previously presented.

The Roder patent is cited to show prongs that extend up from a tray. The Roder reference makes no disclosure of stacked cog shaped foam elements that are covered with a grid. Accordingly, the Roder patent does not address the deficiencies of the LaMontagne, British James, O'Donnell and James references as applied to Claim 8.

Claim 9 is therefore believed to be allowable since it depends from, and further defines, an allowable base claim.

**GROUND 3 - Whether the Examiner erred in finally rejecting Claims 1 - 17 under 35 U.S.C. §103 because the Examiner has no proper motivation for the combinations made, thereby producing a wrongful hindsight reconstruction.**

The Examiner's rejection based upon the cited references requires a selective combination of various elements before the references can be applied to the pending claims. The law is clear. When prior art references require selective combination to render the claims of an application obvious, there must be some reason for the combination other than hindsight gleaned from the invention itself. See *Interconnect Planning Corp. v. Feil* 774 F.2nd 1138, 227 USPQ 543 (Fed

*Cir 1985), and Ashland Oil, Inc. 776 F.2nd 281, 227 USPQ 657 (Fed Cir 1985). Something in the prior art as a whole must suggest the desirability and thus the obviousness of making the combination. See Lindermann Maschinenfabrik GmbH v. American Hoist and Derrick Co. 730 F.2nd 1452, 221 USPQ 481 (Fed Cir. 1984), and Uniroyal Inc. v. Rudkin-Wiley Corp. 5 USPQ 2nd 1434 (1988).*

As the court stated in *Uniroyal*, 837 F.2nd at 1051, 5 USPQ2nd at 1438, "it is impermissible to use the claims as a frame and the prior art references as a mosaic to piece together a facsimile of the claimed invention." In regard to the matter set forth in Claims 1 and Claim 8, the prior art cited simply does not disclose any floral foam arrangement made from stacked disks or stacked cogs that are covered with a plastic grid. Since nothing in the cited art suggests what was claimed, the Examiner's combination is without motivation and is wrongful. It is therefore hoped that the Examiners 35 USC 103 rejections be withdrawn.

## **CONCLUSION**

The Applicant's brief is believed to be in full compliance with 37 C.F.R. §1. 192(c) et seq. The Examiner's 35 U.S.C. §103 rejections are not supported by the cited references. The Board is therefore requested to cause the Examiner to remove the rejection and allow the remaining pending claims.

  
Respectfully Submitted,

Eric A. LaMorte  
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Attorney for Applicant

LaMorte & Associates, P.C.  
P.O. BOX 434  
Yardley, PA 19067

## **VIII. CLAIMS APPENDIX [37 CFR 41.47(c)(8)]**

The pending claims stand as follows:

1. A reusable floral arrangement assembly, comprising:
  - a water impermeable tray having a top surface, a bottom surface a continuous side wall that extends upwardly from said top surface;
  - a connector disposed on said bottom surface of said tray;
  - a support for holding said tray, wherein said support is selectively attachable to said connector on said bottom surface of said tray;
  - a plurality of disposable circular foam elements that include a base level circular element and at least one subsequent level circular element, wherein said base level circular element rests upon said top surface of said tray, and wherein said base level circular element and said at least one subsequent level circular element differ in diameter and are stacked atop each other forming a foam structure having tiered configuration with multiple levels and exposed vertical surfaces and horizontal surfaces on each of said levels; and
  - a grid work extending over said foam structure, said grid work having an open bottom edge that selectively engages said continuous wall of said tray with a snap connection, wherein said grid work envelopes said foam structure and holds said foam structure in a set position on said tray while said grid work demarcates both said vertical surfaces and said horizontal surfaces exposed on each level of said foam structure into a plurality of equally sized areas.
3. The assembly according to Claim 1, wherein said tray includes at least one prong that extends up into said foam structure, thereby helping retain said plurality of disposable foam element in said set position on said tray.
7. The assembly according to Claim 1, wherein said support is selected from a group consisting of bouquet handles, centerpiece stands and ground spikes.

8. A floral arrangement assembly, comprising:

a plurality of foam elements that include a base level element and at least one subsequent level element, wherein each of said plurality of foam elements are generally cog shaped having square cog projections that symmetrically protrude in a radial pattern, and wherein said base level element and said at least one subsequent level element differ in size and are stacked atop each other forming a foam structure having tiered configuration with multiple levels and exposed vertical surfaces and horizontal surfaces on each of said levels;

a tray for supporting said foam structure, said tray having a top surface, upon which said foam structure rests, and an opposite bottom surface; and

a continuous wall extending upwardly from said top surface of said tray, wherein continuous wall and said top surface of said tray define an area capable of retaining a predetermined volume of water.

9. The assembly according to Claim 8, further including at least one prong on said top surface of said tray that extends up into said foam structure, thereby retaining said plurality of foam elements in a set position on said tray.

10. The assembly according to Claim 8, further including a support that extends from said bottom surface of said tray for supporting said tray.

11. The assembly according to Claim 10, wherein said tray is selectively attachable and removable from said support.

12. The assembly according to Claim 11, wherein said support is selected from a group consisting of bouquet handles, centerpiece stands and ground spikes.

**IX. EVIDENCE APPENDIX [37 CFR 41.37(c)(1)(ix)].**

There is no evidence submitted under 37 CFR 1.130, 1.131 or 1.132 or any other evidence relied upon by the applicant

**X. RELATED DECISION APPENDIX [37 CFR 41.37(c)(1)(x)].**

There are no decisions by a court or the Board relevant to this appeal.